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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,454	12/09/2003	Paul E. McKenney		4652
7590	05/18/2004		EXAMINER	
Pryor Garnett, Counsel IBM Corporation Intellectual Property Law Dept., EDO2-805 15450 SW Koll Parkway Beaverton, OR 97006-6063			VU, TRISHA U	
			ART UNIT	PAPER NUMBER
			2112	
			DATE MAILED: 05/18/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

**BEST AVAILABLE COPY**

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/731,454	MCKENNEY, PAUL E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Trisha U. Vu	2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 December 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Claims 1-31 are presented for examination.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7, 10-20, and 22-28, and 30-34 of US Patent No. 6,678,772 (McKenney) contain every element of claims 1-31 of the instant application and as such anticipate claims 1-31 of the instant application.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 6-7, 15-17, 24-25, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ho (5,615,373).

As to claim 1, Ho teaches method for dynamically determining a lock mode in a multiprocessor, comprising: (a) maintaining first and second system-

wide measures (by servers 14, 16,...) of read and write acquisitions (system statistics: file read access rate, file write access rate, system read/write ratio,...); and (b) determining a lock mode (locks with different lifetimes) based upon at least some of said measures (Figs. 1-2, col. 4, lines 9-48 and claim 11).

As to claim 4, Ho further teaches switching to the lock mode from another lock mode (determining another lock lifetime) (col. 6, lines 21-45).

As to claim 6, Ho further teaches said determining step is further responsive to a quantity of units in the system (e.g. the number of client workstations) (Fig. 2 and col. 4, lines 42-47).

As to claim 7, Ho further teaches said unit is selected from a group consisting of: a CPU, a thread, a processor, a transaction, a co-routine, a thread in a multithreaded architecture, a NUMA module, and a task (workstations) (col. 4, lines 42-47).

As to claim 15, Ho further teaches periodically updating at least some of said system-wide measures (col. 5, lines 1-46 and col. 6, lines 21-45).

As to claim 16, Ho further teaches at least some of said second system-wide measures are selected from a group consisting of: a digital filter, a weighted average, a sliding window average, a finite impulse response, and a central data structure (e.g. in server 14) (col. 5, lines 1-45 and col. 6, lines 5-45).

As to claim 17, Ho teaches a computer system comprising: multiple processors (Fig. 2); first and second system-wide measures of read and write acquisitions of said processors (system statistics: file read access rate, file write access rate, system read/write ratio); and a lock mode manager (by servers 14,

16,...) adapted to select a lock mode responsive to at least some of said measures (Figs. 1-2, col. 4, lines 9-48 and claim 11).

As to claim 24, Ho teaches in a multiprocessor system, an article comprising: a computer-readable signal bearing medium (Figs. 1-2); means in the medium for maintaining first and second system-wide measures of read and write acquisitions (system statistics: file read access rate, file write access rate, system read/write ratio,...); and means in the medium for selecting a lock mode (locks with different lifetimes) responsive to at least some of said measures (Figs. 1-2, col. 4, lines 9-48 and claim 11).

As to claim 25, Ho further teaches the medium is selected from a group consisting of: a recordable data storage medium and a modulated carrier signal (file servers 14, 16,... or the whole computer system 10) (Fig. 1 and col. 3 line 47 to col. 3 line 8).

As to claim 31, Ho further teaches at least some of said second system-wide measures are selected from a group consisting of: a digital filter, a weighted average, a sliding window average, a finite impulse response, and a central data structure (e.g. in server 14) (col. 5, lines 1-45 and col. 6, lines 5-45).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, as the art discloses lock modes:

US Patent 5,983,225 Anfindsen

US Patent 6,546,443 Kakivaya et al.

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US Patent	5,761,659	Bertoni
US Patent	5,287,521	Nitta et al.
US Patent	5,596,754	Lomet
US Patent	5,960,194	Choy et al.
US Patent	5,737,611	Vicik
US Patent	5,872,981	Waddington et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trisha U. Vu whose telephone number is 703-305-5959. The examiner can normally be reached on Mon-Thur and alternate Fri from 7:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart can be reached on 703-305-4815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Trisha Vu*  
Trisha U. Vu  
Examiner  
Art Unit 2112

uv

*Sumati Lefkowitz*  
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